

Amendment No. 6 to SB0349

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AMEND Senate Bill No. 349*

House Bill No. 1781

by deleting Sections 3 and 4 of the bill as amended by Senate Amendment No. 1 (SA 1117) and by substituting instead the following new sections:

SECTION 3.

(a) Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subitem (H) and relettering the remaining subitems accordingly:

(H) Any depreciation permitted as a deduction in computing federal taxable income solely as a result of the provisions of Title 1, Section 101, of the Job Creation and Worker Assistance Act of 2002.

(b) Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new subitem (I) and relettering the remaining subitems accordingly:

(I) Any depreciation in excess of that which the taxpayer deducted in computing its federal taxable income that could have been deducted in computing such income if the taxpayer had computed its depreciation under the provisions of Section 168 of the Internal Revenue Code as it existed and applied immediately prior to the passage of Title 1, Section 101, of the Job Creation and Worker Assistance Act of 2002.

SECTION 4.

(a) Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language “six and one-half (6½) mills” and by substituting instead the language “ten (10) mills”.

(b) Any wholesale dealers, jobbers, tobacco distributors, and retail dealers having cigarette tax stamps, affixed and unaffixed, in their possession on July 1, 2002,

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shall not be required to pay the additional cigarette tax resulting from the increase in tax rate from six and one-half (6½) mills to ten (10) mills on cigarettes to which such stamps in their possession are or shall be affixed.

(c) Notwithstanding the provisions of any law to the contrary, all increased revenues directly attributable to the rate increase set forth in subsection (a) above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes; and no portion of such increased revenues may be distributed to county or municipal government unless specifically authorized within the general appropriations act.

SECTION 5. Tennessee Code Annotated, Section 67-4-1005, is amended by deleting that section in its entirety and by substituting instead the following language:

§ 67-4-1005.

(a) The rate on all other tobacco products, including, but not limited to, cigars, cheroots, stogies, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute therefor, shall be six and six-tenths percent (6.6%) of the wholesale cost price.

(b) Notwithstanding the provisions of any law to the contrary, all increased revenues directly attributable to the rate increase set forth in subsection (a) above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes; and no portion of such increased revenues may be distributed to county or municipal governments unless specifically authorized within the general appropriations act.

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SECTION 6. Tennessee Code Annotated, Section 57-3-302, is amended by deleting that section in its entirety and by substituting instead the following language:

§ 57-3-302.

(a) There is levied upon the sale or distribution by sale or gift a tax of one dollar and twenty-one cents (\$1.21) on each gallon of wine, and a like or proportional rate per gallon on wine sold or distributed in any other container of more or less than one (1) gallon; provided, however, that the provisions of this chapter shall not apply to the sale, gift or distribution of any wine manufactured, sold, given away or distributed and used solely for sacramental purposes.

(b) There is levied upon the sale or distribution by sale or gift a tax of four dollars and forty cents (\$4.40) on each gallon of spirits, and a like or proportional rate per gallon on spirits sold or distributed in any container of more or less than one (1) gallon.

(c) Notwithstanding the provisions of any law to the contrary, all increased revenues directly attributable to the rate increase set forth in subsections (a) and (b) above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes; and no portion of such increased revenues may be distributed to county or municipal governments unless specifically authorized within the general appropriations act.

SECTION 7.

(a) Tennessee Code Annotated, Section 57-5-201(a), is amended by deleting that subsection in its entirety and by substituting instead the following language:

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(1) Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling, distributing, or manufacturing such beer or other beverages as are described in this chapter shall pay a special privilege tax, in addition to all other taxes, in an amount equal to four dollars and twenty-nine cents (\$4.29) per barrel of thirty-one (31) liquid gallons stored, sold, distributed by gift or sale or manufactured in this state. The tax upon barrels containing more or less than thirty-one (31) gallons shall be at a proportionate rate. Beer or other such beverage manufactured in Tennessee and thereafter exported for sale, distribution or gift, or dispensed gratuitously and consumed on the premises, shall not be included in the measure of the tax liability hereby provided for. The commissioner of revenue is authorized to promulgate rules and regulations for the purpose of securing the exemption hereby given and for the purpose of preventing such exemption from being claimed in the case of beer sold, distributed or given away in Tennessee. The burden shall be on the manufacturer claiming exemption to establish to the satisfaction of the collection officers that the beverage manufactured in Tennessee is exempt under this subsection.

(2) Notwithstanding the provisions of any law to the contrary, all increased revenues directly attributable to the rate increase set forth in subdivision (a)(1) above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes; and no portion

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of such increased revenues may be distributed to county or municipal governments unless specifically authorized within the general appropriations act.

(b) Tennessee Code Annotated, Section 57-6-104(c)(5), is amended by inserting the language "or the state privilege tax levied in § 57-5-201" immediately following the words "excise tax" in the first sentence.

(c) Tennessee Code Annotated, Section 57-6-103(a), is amended by designating the existing language as subdivision (1) and by adding the following new subdivision:

(2) Notwithstanding any provision of subdivision (1) or any other law to the contrary, the seventeen percent (17%) tax levied in subdivision (1) shall not be applied to the increase in the special privilege tax on beer from three dollars and ninety cents (\$3.90) to four dollars and twenty-nine cents (\$4.29) provided in § 57-5-201, or to any increase in the wholesale price of beer resulting from such increase in the special privilege tax on beer.

SECTION 8.

(a)

(1) Tennessee Code Annotated, Section 67-6-103(f), is amended by deleting the language "six percent (6%) in accordance with the provisions of part 2 of this chapter as well as pursuant to the local option revenue act in part 7 of this chapter, and be distributed in accordance with the provisions of § 67-6-103." and by substituting instead "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202 as well as pursuant to the local

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option revenue act in part 7 of this chapter, and be distributed in accordance with the provisions of § 67-6-103 and this act."

(2) Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "at the rate of six percent (6%) of" and by substituting instead the language "on" and by adding at the end of the subsection the language:

The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property as defined in § 67-6-702(d). The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars (\$1,600), but less than or equal to three thousand two hundred dollars (\$3,200), on the sale or use of any single article of personal property.

(3) Tennessee Code Annotated, Section 67-6-203, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting

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instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

(4) Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears in subsections (a) and (c) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

(5) Tennessee Code Annotated, Section 67-6-205, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

(6) Notwithstanding the provisions of subdivisions (a)(1) through (5) of this section to the contrary, sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to June 15, 2002, or awarded by the state or a political subdivision pursuant to a bid opening which occurred prior to June 15, 2002, shall be subject to tax at the state rate of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. In addition, sales to or use by a subcontractor of tangible personal property, including rentals thereof and labor or services performed in the fabrication,

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manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a written subcontract entered into prior to September 1, 2002, if such subcontract is made pursuant to a general contract qualifying for the reduced rate of tax as set out above, shall be subject to tax at the rate of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. Any vendor making such sales to any such contractor or subcontractor shall collect tax at the state rate levied in subsections (a)(1) through (5) of this section plus the local option sales tax rate in the county or municipality in which the property is sold or used. Any such contractor paying tax at the state rate levied in subsections (a)(1) through (5) of this section plus the local option sales tax rate may then file a claim with the commissioner of revenue for a refund of any such tax paid to any of the contractor's vendors at a rate in excess of six percent (6%) plus the local option sales tax rate in effect on June 15, 2002, in the county or municipality in which the property is sold or used. For purposes of this subsection the term "lump sum or unit price construction contract" means a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor or material vendor is fixed without regard to the costs incurred in the performance of the contract. The provisions of this paragraph shall not be construed to increase the rate of tax imposed pursuant to the provisions of Tennessee Code Annotated, Section 67-6-206.

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(b) Notwithstanding the provisions of § 67-6-103(a)(3) or any other law to the contrary, all increased revenues directly attributable to the rate increases set forth in subsection (a) above shall be paid into the state's general fund and shall be allocated exclusively for general state purposes; and no portion of such increased revenues may be distributed to county or municipal governments unless specifically authorized by the general appropriations act.

SECTION 9. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as appropriately designated items:

() "Professional person" means any of the following individuals who are licensed or registered under the applicable laws of this state or any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States or the applicable laws of any foreign country:

- (A) A lobbyist;
- (B) An investment advisor;
- (C) An accountant;
- (D) An architect;
- (E) An engineer;
- (F) A landscape architect;
- (G) A sports agent;
- (H) An audiologist;
- (I) A chiropractor;
- (J) A dentist;

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- (K) An optometrist;
- (L) An osteopathic physician;
- (M) A pharmacist;
- (N) A physician;
- (O) A podiatrist;
- (P) A psychologist;
- (Q) A speech pathologist;
- (R) A veterinarian; and
- (S) An attorney.

() "Professional service business" means any person or taxpayer that, as its primary business, offers any one or more of the services for which a professional person is required to be registered or licensed to offer;

() "Relative or family member" means, with respect to an individual, only:

- (A) An ancestor of such individual;
- (B) The spouse of such individual;
- (C) A lineal descendent of such individual, of such individual's spouse, or of a parent of such individual; or
- (D) The spouse of any lineal descendent described in subdivision (C).

For purposes of this subdivision, a legally adopted child of an individual shall be treated as the child of such individual by blood.

SECTION 10. Tennessee Code Annotated, Section 67-4-2006(a), is amended by

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deleting the language "subsections (b) and (c)" wherever it appears and substituting instead the language "subsections (b), (c), (d) and (e)".

SECTION 11. Tennessee Code Annotated, Section 67-4-2006, is further amended by deleting subsection (d) in its entirety and substituting instead the following subsections:

(d) Except in the case of a financial institution, an insurance company, or an insurance holding company, a taxpayer shall then add to its net earnings, determined in accordance with applicable subsections (a), (b) and (c) of this section, an amount equal to the sum of compensation that exceeds, for any one (1) individual, one hundred thousand dollars (\$100,000) per tax year that is paid either to:

(1) Any individual who owns more than a one percent (1%) interest in the taxpayer's stock, assets, profits (losses), or voting rights; or

(2) A relative or family member of such owner.

(e) In addition, a professional service business shall then add to its net earnings determined in accordance with applicable subsections (a), (b), (c), and (d) of this section, an amount equal to the sum of compensation paid to any professional person employee that exceeds, for any one professional person employee, one hundred thousand dollars (\$100,000) per tax year.

(f) Any amount added under subsection (d) or (e) of this section shall not be reduced by any net loss or loss carryover computed under subsections (a), (b), or (c) of this section. Taxpayers doing business both within and without Tennessee so as to be entitled to apportionment shall apportion the compensation to be added under

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subsection (d) or (e) of this section using the appropriate apportionment formula provided in this part.

(g) The amount computed under subsections (a), (b), (c), (d), (e) and (f) shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in Section 67-4-2007.

SECTION 12. Tennessee Code Annotated, Section 67-4-2004(16), is amended by inserting the words and punctuation "general partnership, natural person doing business as a sole proprietorship," between the words and punctuation "limited partnership," and the word "cooperative".

SECTION 13. Tennessee Code Annotated, Section 67-4-2006(a)(4), is amended by adding the following as a new subitem (C) and relettering the remaining subitem as subitem (D):

(C) One hundred thousand dollars (\$100,000), provided, however, that this subitem (C) deduction shall be available only to general partnerships and the deduction of this amount by a general partnership shall not create or increase any net loss; less

SECTION 14. Tennessee Code Annotated, Section 67-4-2006(a), is amended by deleting subdivision (5) in its entirety.

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following as a new subdivision ():

() In the case of a sole proprietorship, "net earnings" or "net loss" is defined as amount equal to:

(A) The amount of net profit or loss from all trades, businesses, farms or professions engaged in by the proprietor, determined by applicable provisions of

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the Internal Revenue Code as reported on federal form 1040 or any variation thereof, and appropriate schedules, including any amount subject to self employment tax, without regard to any cap, and including the amount of any gains or losses from the sale of assets held or used in all trades, businesses, farms or professional activities; less

(B) One hundred thousand dollars (\$100,000), provided, however, that the deduction of this amount by a proprietorship shall not create or increase any net loss;

(C) As adjusted by subsections (b), (c), (d) and (e).

SECTION 16. Tennessee Code Annotated, Section 67-4-2008(a), is amended by deleting subdivision (8) in its entirety.

SECTION 17. Tennessee Code Annotated, Section 67-4-2008, is amended by deleting subsections (b), (c) and (d) in their entirety.

SECTION 18. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the language in subsection (b) in its entirety and substituting instead the following:

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. "Property" includes a taxpayer's ownership share of the real or tangible property owned or rented by any general partnership, limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal

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income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee excise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c). In the case of a sole proprietorship, property shall not include any property or portion thereof not actually used in the proprietorship's business.

SECTION 19. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the language in subsection (e) in its entirety and substituting instead the following:

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

"Compensation" includes a taxpayer's ownership share of any specific compensation of any general partnership, limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee excise tax.

SECTION 20. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the language in subsection (g) in its entirety and substituting instead the following:

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The receipts factor is a fraction, the numerator of which is the total receipts of the taxpayer in this state during the tax period, and the denominator of which is the total receipts of the taxpayer everywhere during the tax period. For purposes of this section, "gross receipts" includes a taxpayer's ownership share of gross receipts of any general partnership, limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee excise tax. In the case of a sole proprietorship, gross receipts shall not include any receipts or portion thereof not actually generated by the proprietorship.

SECTION 21. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following as new subsections:

() Notwithstanding any other law to the contrary, a general partnership or a proprietorship shall not be penalized for failure to make any quarterly estimated tax payment due prior to July 1, 2002; provided, however, that quarterly estimated tax payments that become due after July 1, 2002, shall be timely made. The provisions of subdivisions (1) through (3) below shall apply to quarterly estimated tax payments for tax years ended on or after June 30, 2002, but before March 31, 2003:

(1) The 4th quarterly payment for the tax years ended June 30, 2002, July 31, 2002, August 31, 2002, and September 30, 2002, shall equal eighty percent (80%) of the combined franchise and excise tax liability for the tax year.

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(2) The 3rd and 4th quarterly payments for the tax years ended October 31, 2002, November 30, 2002, and December 31, 2002, shall each equal forty percent (40%) of the combined franchise, excise tax liability for the tax year.

(3) The 2nd, 3rd, and 4th quarterly payments for the tax years ended January 31, 2003, and February 28, 2003, shall each equal twenty-six and two-thirds percent (26 $\frac{2}{3}$ %) of the combined franchise, excise tax liability for the tax year.

() Notwithstanding the provisions of Section 67-1-803(a)(2)(A), the commissioner may waive any franchise and excise tax penalty levied on any general partnership or proprietorship that was not subject to the prior franchise and excise tax law and that failed to register with the department for the franchise and excise tax; provided that this provision shall apply only to tax years ending on or after June 30, 2002, but before July 31, 2003.

SECTION 22. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following sentence at the end of subsection (b):

In the case of a sole proprietorship, "total assets" and "total liabilities" shall not include any assets or liabilities or portion thereof that are not actually property or obligations of the proprietorship's business.

SECTION 23. Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting the second sentence of subdivision (3) in its entirety.

SECTION 24. Tennessee Code Annotated, Section 67-4-2108(a)(6), is amended by deleting subitem (E) in its entirety and relettering the remaining subitems accordingly.

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SECTION 25. Tennessee Code Annotated, Section 67-4-2108(a)(6), is amended by deleting the language in subitem (F) in its entirety and substituting instead the following:

(F) "Used" means only such property as is actually utilized by the taxpayer in the conduct of its business and, in the case of a sole proprietorship, shall not include any property or portion thereof not actually used in the proprietorship's business; and

SECTION 26. Tennessee Code Annotated, Section 67-4-2111(b), is amended by deleting the language in subdivision (2) in its entirety and substituting instead the following:

(2) "Property" includes a taxpayer's ownership share of the real or tangible property owned or rented by any general partnership, limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee franchise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c). In the case of a sole proprietorship, property shall not include any property or portion thereof not actually used in the proprietorship's business.

SECTION 27. Tennessee Code Annotated, Section 67-4-2111(e), is amended by deleting the language in subdivision (3) in its entirety and substituting instead the following:

(3) "Compensation" includes a taxpayer's ownership share of any specific compensation of any general partnership, limited partnership, subchapter S corporation,

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limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee franchise tax.

SECTION 28. Tennessee Code Annotated, Section 67-4-2111(g), is amended by deleting the language in subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, "gross receipts" includes a taxpayer's ownership share of gross receipts of any general partnership, limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one (1) or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee franchise tax. In the case of a sole proprietorship, gross receipts shall not include any receipts or portion thereof not actually generated by the proprietorship.

SECTION 29. The commissioner of revenue is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

SECTION 30. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

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act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 31.

(a) Section 3 of this act shall take effect upon becoming law and shall apply to excise tax returns filed for tax years ending on or after June 30, 2002, the public welfare requiring it.

(b) Sections 4 through 8 of this act shall take effect July 1, 2002, the public welfare requiring it.

(c) Sections 9 through 11 of this act shall take effect upon becoming law and shall apply to tax years beginning after June 30, 2002, the public welfare requiring it.

(d) Sections 12 through 28 of this act shall take effect upon becoming law and shall apply to tax years ending on or after June 30, 2002, the public welfare requiring it.

(e) All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.